JOINT REPORT ON ARTICLE 16, MUSLIM FAMILY LAW AND MUSLIM WOMEN'S RIGHTS IN

KUWAIT

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A. INTRODUCTION

Musawah, the global movement for equality and justice in the Muslim family and Abolish 153 campaign, Kuwait submit this joint Shadow Report on Article 16 and related concerns for consideration by the CEDAW Committee in its review of the Government of Kuwait, reporting before the 68th Session of the CEDAW Committee in November 2017.*

This is the CEDAW Committee's third engagement with Kuwait, which ratified CEDAW Convention on September 2, 1994, with reservations.

This report examines Kuwaiti Personal Status Act (KPSA) that enforces *de jure* and *de facto* discrimination against women in the follow areas: equality in marriage, women's consent and capacity to enter into marriage, child and early marriage, polygamy and divorce rights.

The report also specifically highlights issues of gender-based violence in the context of family and discriminatory legal provisions, including Article 153 of the Kuwaiti Penal Code, which effectively gives men regulatory power over their female kin. It is a grave violation of human rights, that Article 153 of the Penal Code justifies the murder of mothers, daughters, sisters and wives on the basis of 'honor'. Furthermore, the Penal Code discriminates between men and women in terms of the penalty imposed on the perpetrator of murder related to the crime of adultery, and commutes the offense from felony to misdemeanor for men, but not for women under similar circumstances. In light of the absence of laws that criminalize violence against women, there is also a lack of administrative and executive measures to protect women subjected to violence within the family.

Lastly this report contains sections on **Positive Developments in Muslim Family Laws** with examples of good and better practices from other Muslim contexts based on Musawah's research and comparative analysis of Muslim family laws and practices in 31 countries.
We hope that the issues, analysis, and recommendations in this report will provide critical information in:

(1) Highlighting key concerns and identifying gaps in the State party report and the State party's response to the List of Issues;
(2) Providing alternative arguments within Muslim legal theory that challenge the ways the State party uses religion to justify discrimination, including reservations and non-implementation of its international human rights treaty obligations; and
(3) Suggesting recommendations for reform based on good practices in Muslim contexts.

We hope that the CEDAW Committee will utilize this report as a key resource during its Constructive Dialogue with the State party, and in highlighting follow-up issues in the Concluding Observations.

** Musawah would like to thank the International Human Rights Clinic at Harvard Law School for its support in the research, preparation, and drafting of this report.*

B. LEGAL BACKGROUND

Kuwait is a predominantly Muslim country, where Muslims make up about 75% of the total population and about 99.9% of the Kuwaiti population.[1] Sunnis make up about 80% of the Muslim population, while Shias account for about 20%.[2] Other religions practiced in Kuwait include Christianity and Hinduism.[3]

According to the 2016 UNDP Human Development Report, Kuwait ranked 51 on the UNDP Human Development Index and 70 on the UNDP Gender Inequality Index.[4] Kuwait was ranked 128th out of 144 countries with a score of 0.624 in the 2016 Global Gender Gap Index[5] released by the World Economic Forum. Kuwait demonstrates low numbers of women in managerial and senior positions including those in government and in parliament.

With regard to the CEDAW Convention, Kuwait has entered reservations to Articles 9(2), 16(1)(f) and 29. With regard to Article 16(1)(f), Kuwait states that it "*does not consider itself bound by the provision contained in 16 (1)(f) in as much as it conflicts with the provisions of Islamic Shari'ah, Islam being the official religion of the State*."[6]

The Constitution of Kuwait includes several provisions that provide for justice and equality in society. Article 7 of the Constitution states that justice, freedom and equality are the "*pillars of society*".[7] Article 8 of the Constitution provides that the State shall preserve the pillars of society and shall guarantee security, tranquility and equal opportunity to all citizens.[8]

While gender equality is not specifically mentioned, Article 29 of the Constitution provides for dignity and equality in public rights and obligations in the eyes of the law, and prohibits discrimination on the basis of race, origin, language or religion.[9] Article 9 of the Constitution declares the family as the foundation of society and its mainstays are religion, morals and the love of country. The provision obligates the law to preserve its entity, strengthen its bonds and under its aegis, protect mothers and infants.[10]

KUWAIT PERSONAL STATUS ACT (KPSA)

The Kuwaiti Personal Status Act No. 51/1984 (KPSA)[11] (also referred to as Family Law Act) is the main codified law that governs matters relating to marriage and family relations of the majority Sunni Muslim population in Kuwait.[12]

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1 June 2017 Population Statistical Report, Kuwaiti Public Authority for Civil Information, http://stat.paci.gov.kw/englishreports/#DataTabPlace:ColumnChartEduAge
2 Mapping the Global Muslim Population (2009), Pew Forum on Religion and Public Life, http://www.pewforum.org/files/2009/10/Shiarange.pdf
3 Religious Freedom in the World Report (2016), http://religion-freedom-report.org.uk/wp-content/uploads/country-reports/kuwait.pdf
4 UNDP, "Human Development Report 2016", Table 5, pp. 214-217, http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf
5 Global Gender Gap Report http://womensmediasummit.org/wp-content/uploads/2017/03/WEF_Global_Gender_Gap_Report_2016.pdf
6 United Nations Treaty Collection Website: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en
7 Article 7 of Kuwait's Constitution (1962), https://www.constituteproject.org/constitution/Kuwait_1992.pdf
8 Article 8 of Kuwait's Constitution (1962), https://www.constituteproject.org/constitution/Kuwait_1992.pdf
9 Article 29 of Kuwait's Constitution (1962), https://www.constituteproject.org/constitution/Kuwait_1992.pdf
10 Article 9 of Kuwait's Constitution (1962), https://www.constituteproject.org/constitution/Kuwait_1992.pdf
11 Personal Status Act (1984), https://www.e.gov.kw/sites/kgoarabic/Forms/QanoonAlAhwalAlMadaniyah.pdf
12 Information obtained from Kuwaiti advocate, May 2017

The KPSA is based on an amalgamation of rules taken primarily from the four Sunni schools of jurisprudence, and in instances where the KPSA does not sufficiently address a particular matter of personal status, a judge is to adjudicate a case in accordance with the rules and general principles of the Maliki School of jurisprudence.[13] Article 346 of the KPSA specifies that the law applies to those who follow the Maliki School, which represent the majority of Kuwait's Sunni population, whereas adherents to other schools shall be governed by "their own rules."[14]

Kuwait operates a family court system that administers the KPSA primarily for Sunnis and applies rules of *fiqh* (Islamic jurisprudence) differently for the Shia minority. Non-Muslims apply their own customary or religious laws in Family Courts.[15]

In 2015, Kuwait enacted a law that established Family Courts as autonomous judicial entities in each governorate.[16] According to the 2016 Kuwait State party report to the CEDAW Committee, the Family Court is "the body which is competent to settle martial disputes under the Personal Status Act…which regulates all matters pertaining to personal status including marriage, divorce, maintenance, custody, inheritance and legacy".[17]

The Family Courts Law further specifies that courts shall adjudicate personal status matters in accordance with Article 346 of the KPSA.[18] Therefore, given that the different schools of jurisprudence differ in opinion on some personal status matters, Kuwaiti women, based on the sect they belong to, experience the implementation of the KPSA differently.

As will be demonstrated in the following sections, the KPSA includes provisions that are discriminatory on the basis of gender and violate the rights of women and girls in Kuwait.

THE KUWAITI PENAL CODE

The Kuwaiti Penal Code of 1960 includes various discriminatory provisions, which violate rights of women and girls. Specifically, the Penal Code:

- Permits an otherwise criminal act if it is 'committed in good faith', provided the perpetrator has complied with the limits of that right;[19]
- Permits the use of physical discipline by a person entitled by law, provided its limits and intention are strictly adhered to;[20]
- Exempts a kidnapper of a woman from criminal liability if he marries the victim with the permission of her guardian;
- Provides for lesser penalty for "honor" crimes, including violent ones.

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13 Article 343 of the Personal Status Act (1984), https://www.e.gov.kw/sites/kgoarabic/Forms/QanoonAlAhwalAlMadaniyah.pdf
13 Information obtained from Kuwaiti advocate, May 2017
14 Article 346 of the Personal Status Act (1084), https://www.e.gov.kw/sites/kgoarabic/Forms/QanoonAlAhwalAlMadaniyah.pdf ; Article 346 also states that the law shall apply to cases of non-Muslims if different parties to a case adhere to different religions or sects.
15 Article 345A of the Personal Status Act (1984), https://www.e.gov.kw/sites/kgoarabic/Forms/QanoonAlAhwalAlMadaniyah.pdf
16 Kuwait Family Court Law (2015), http://www.gcc-legal.org/LawAsPDF.aspx?opt&country=1&LawID=4152
17 Kuwait State party report, U.N. Doc. CEDAW/C/KWT/5 (2016), p. 30, http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx
18 Article 4 of the Family Court Law (2015), http://www.gcc-legal.org/LawAsPDF.aspx?opt&country=1&LawID=4152
19 Article 28 of the Penal Code (1960), http://gulfmigration.eu/database/legal_module/Kuwait/National%20Legal%20Framework/Rights%20and%20Obligations/2.1%20Penal%20Law_AR.pdf
20 Article 29 of the Penal Code (1960), http://gulfmigration.eu/database/legal_module/Kuwait/National%20Legal%20Framework/Rights%20and%20Obligations/2.1%20Penal%20Law_AR.pdf

III. KEY ISSUES, LIVED REALITIES, ISLAMIC JURISPRUDENCE & REFORM

1. FAMILY LAW BASED ON RECIPROCITY OF RIGHTS

CRITICAL INFORMATION

The guarantees of equality in the Constitution are not reflected in the KPSA, which is based on a marital framework of 'reciprocal' or 'complementary' of rights (as opposed to 'equal' rights) between the two spouses. As per the KPSA, in return for maintenance and protection from her husband, a wife is expected to 'obey' him.[21]

Article 1 of the KPSA defines marriage as a contract between a man and a woman who is legally available to him, for the purpose of 'cohabitation, matrimony and strengthening the power of the nation'.

Article 87 of KPSA provides that:

(i) A wife loses her right to financial maintenance for the period that she refuses to move into the marital home without justification or prevents her husband from cohabitating with her in her home (provided that he has not prevented her from moving into the marital home);
(ii) The wife's 'disobedience' is not proved unless she refuses to implement the final court decision to be 'obedient';
(iii) The wife has to prove that her husband is not protective of her, or did not pay her advance dowry, or did not prepare the legal marital home or refuses to support her financially.

CHALLENGING THE MAINTENANCE-OBEDIENCE FRAMEWORK

The concept of male authority (*qiwamah*) and male guardianship (*wilayah*) over women play a central role in institutionalizing, justifying, and sustaining a patriarchal model of families in Muslim contexts. This must be challenged.

These concepts have resulted in a Muslim legal tradition where the husband's duty to maintain his wife and children comes with a corollary condition—that the wife is required to be obedient to him.[22] Her failure to obey (*nushuz*) could lead to her losing her right to maintenance. Musawah argues that the logic of such a law, maintenance in return for obedience, is discriminatory in practice.

Furthermore, Musawah contends that the very notion of male authority and guardianship over women is not in line with Qur'anic principles. The hierarchical understandings of *qiwamah* and *wilayah* are juristic (*fiqh*) constructs that belong to the time and context where patriarchy was part of the social and economic fabric of life, and where men's superiority and authority over women was theoretically a given.

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21 Articles 1, 74, 87 of the Personal Status Act (1984), https://www.e.gov.kw/sites/kgoarabic/Forms/QanoonAlAhwalAlMadaniyah.pdf
22 Musawah, *CEDAW and Muslim Family Laws: In Search of Common Ground* (2011), http://www.musawah.org/sites/default/files/CEDAW%20%26%20Muslim%20Family%20Laws_0.pdf.

We can and must reconsider these concepts in line with the Qur'anic principles of justice and fairness, to build egalitarian family laws and practices that are based on social justice and enable families and their individual members to reach their full potential. The Qur'an introduced numerous reforms to existing cultural practices relating to the financial rights of women, including allowing women to own, inherit and dispose property.

This was the beginning of a trajectory of reform which, if carried forward 1400 years later to reflect changing times and contexts, should lead to the elimination of the legal logic of maintenance in exchange for obedience, and to the introduction of equality between men and women in all areas.

The idea that 'complementarity' or 'reciprocity' of rights and obligations do not constitute discrimination in the Muslim Personal Status laws must be challenged.

In reality today, many men fail to fulfill their duty to provide, and yet do not lose their right to demand obedience from their wives. This idea of 'complementarity' does not in practice lead to equality in rights and responsibilities between the husband and wife. Men who fail to provide do not lose their authority over women, and women who financially provide for the family do not enjoy corollary rights and privileges.

Women's lives and stories reveal that laws based on male authority and guardianship over women are untenable, unjust and discriminatory. Far from creating harmony in marriage, these laws are the main causes of marital breakdown and violence against women and thus there is urgent need for reforms.[23]

RECOMMENDATIONS

We recommend the CEDAW committee to urge the State party to:

- **Reform the KPSA to ensure that the Act grants husband and wife equal rights and responsibilities in marriage, within a legal framework that recognizes marriage as a partnership of equals;**
- **Eliminate all provisions that refer to reciprocity of rights as a basis of marriage relations;**
- **Consider Family Codes in other Muslim contexts such as Morocco, Algeria and Turkey as examples for reforming KPSA to promote equality in the Muslim family.**

23 Musawah resources on *Qiwamah and Wilayah:* 1) Men in Charge? Rethinking Authority in Muslim Legal Tradition http://www.musawah.org/knowledge-building/men-in-charge 2) Global Life Stories Project http://www.musawah.org/knowledge-building/global-life-stories-project

EQUALITY OF SPOUSES IN MARRIAGE

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY

ALGERIA

Under the Constitution and the Civil Code, the family is based on equality between spouses

TURKEY

The Family Code requires each spouse to cohabitate in harmony, mutual respect and kindness, contribute jointly to the preservation of the family's interests, the protection of their children and the provision of a sound education for them and mutually agree in the management of the family's affairs, including the spacing of births.

MOROCCO

The Family Code (Moudawana) recognises marriage as a partnership of equals and specifies the 'mutual rights and duties' between spouses which includes: (i) cohabitation, mutual respect, affection and the preservation of the family interest; (ii) both spouses assuming the responsibility of managing and protecting household affairs and the children's education; and (iii) consultation on decisions concerning the management of family affairs.

TOOLS FOR REFORMING MUSLIM FAMILY LAW

In addition to human rights instruments, juristic tools and concepts exist within Islamic legal theory that can be used to reform discriminatory Muslim laws:

First, there is a distinction between what the State party calls *Shari'ah*, the revealed way, and *fiqh* - jurisprudence and human understanding of the *Shari'ah*. Much of what is deemed to be 'Islamic law' by the State party, and what is practiced in its family courts today are in fact, *fiqh* – jurisprudence. It is not divine law. It is human-made, fallible and changeable.

Second, Muslim jurists have always considered legal rulings related to marriage and family as social and contractual matters, not spiritual or devotional matters. As such these rulings have always been open to reform, given changing times and circumstances.

Third, diversity of opinion has always been accepted and celebrated in the Muslim legal tradition. This led to multiple schools of law, with Kuwait following a particularly school of jurisprudence. Principles such as *maslahah* (public interest), and *istihsan* (choosing the best opinion among many) must be used to meet the demands of equality and justice today.

Forth, laws or amendments introduced in the name of *Shari'ah* and Islam must reflect the values of equality, justice, love, compassion and mutual respect among all human beings. These values exist in the Qur'an and the Muslim legal tradition, and they correspond with contemporary human rights principles.

These rights-based principles and scholarship that exist within Islam, the State party constitutional provision that recognizes equality and non-discrimination, and most importantly, the changing realities of women's lives today in Kuwait, necessitate the urgent need for reform.

2. CONSENT AND CAPACITY TO ENTER MARRIAGE

CRITICAL INFORMATION

Consent of guardian (*wali*): According to the KPSA, regardless of their age, both prospective brides and grooms must consent to the marriage, however a prospective bride also requires the consent of a marital guardian (*wali*).[24] The guardian must be male (father, followed by the son, the grandfather, the paternal step-brother, the uncle and the paternal step-uncle).[25]

Article 29 of the KPSA states that the *wali* (guardian) over a woman who is between puberty and the age of 25 is whoever is next in line of inheritance should the father not be present, and if there are no inheritors, then the judge can act as her guardian; but clause (2) of the article states that the marriage can happen only if both the woman and her *wali* are in agreement.[26] As per the KPSA, a guardian may even arrange a marriage between himself and the woman under his guardianship provided they are not closely related and if she consents.[27]

In the event the *wali* opposes the marriage, the prospective bride may seek the authorization of a judge to get married (known as an '*adel'* case).[28] However, according to academic research:[29]

- Practically and socially, it is difficult for a woman to bring an *adel* case. Essentially, the woman is standing against her family in asking for such approval to marry. If such a request is denied, the woman will have to return to her family against whom she has brought a lawsuit;
- In reality, despite the relative increase of *adel* cases brought before judges in recent years, most women prefer to submit to pressure and will of their *wali* than risk confrontation in a conservative society which would often leave women ostracized from their families or prone to imprisonment or even violence from them;[30]
- Many families view a woman's rejection of her *wali's* wishes as an issue of family "honor" which could lead to their mistreatment and even violence;[31]
- Most *adel* cases are raised by daughters who do not live with their fathers e.g. because her parents are divorced and her mother is the custodian;
- As the law does not specify on what basis a judge can accept or reject a woman's request to get married, the matter is very much left to the discretion of the individual judge. Common reasons for rejecting a woman's request include the prospective groom is of a different religion, disparate income levels, different nationalities, and inappropriate or incompatible ages;

The adverse impact on a woman's ability to marry because of a *wali*'s right to revoke a marriage on the basis of compatibility should not be underestimated.

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24 Articles 8, 29-30 of the Personal Status Act (1984), https://www.e.gov.kw/sites/kgoarabic/Forms/QanoonAlAhwalAlMadaniyah.pdf; Amani Saleh Alessa, "Sex Discrimination within Kuwaiti Family Law, Part 1", (Arab Law Quarterly, 24:2, 2010), pp. 126-128
25 Article 37 of the Personal Status Act (1984), https://www.e.gov.kw/sites/kgoarabic/Forms/QanoonAlAhwalAlMadaniyah.pdf
26 Article 92 of the Personal Status Act (1984), https://www.e.gov.kw/sites/kgoarabic/Forms/QanoonAlAhwalAlMadaniyah.pdf
27 Article 32 of the Personal Status Act (1984), https://www.e.gov.kw/sites/kgoarabic/Forms/QanoonAlAhwalAlMadaniyah.pdf
28 Article 31 of the Personal Status Act (1984), https://www.e.gov.kw/sites/kgoarabic/Forms/QanoonAlAhwalAlMadaniyah.pdf
29 Amani Saleh Alessa, "Sex Discrimination within Kuwaiti Family Law, Part 1", (Arab Law Quarterly, 24:2, 2010), pp. 133-135
30 Al-Adhal: Qadaiya Insaniya Taqhar al-Mar'a, Al-Rai, March 4, 2012, http://www.alraimedia.com/ar/article/issues/2012/03/04/316358/nr/nc
31 Al-Adhal: Qadaiya Insaniya Taqhar al-Mar'a, Al-Rai, March 4, 2012, http://www.alraimedia.com/ar/article/issues/2012/03/04/316358/nr/nc

Registration of marriages:

There is a standardized marriage contract and procedure to register a contract.[32] However, for Sunnis, the signature of the bride is not required in the marriage contract, while for Shias, the signature of the bride is required to ensure that she has in fact consented to the marriage.[33]

The mandatory registration of marriages is provided for in Article 92 of the KPSA, which requires a marriage to be documented in an official marriage certificate. However, non-registration of a marriage does not necessarily invalidate the marriage. Article 92 also provides that a marriage may be proven by legal evidence.[34] Registration of the marriage contract is required to prove a marriage and to hear any court case relating to a marriage or divorce, including maintenance, custody, and inheritance.[35] It is a concern therefore, that women in marriages that are un-registered may face difficulty in proving marriage and obtaining due redress.

Forced (*ijbar*) marriages:

According to information on the ground, women who have been kidnapped or raped are often forced into marriage to ward off 'shame' and to save the family 'honor'. Based on Article 182 of the Penal Code, which exempts rapists from criminal liability if he marries the victim, such marriages are valid and the consent of the woman is not necessary.[36]

As Sunni marriage procedure does not require the women's appearance or signature in the marriage form, a father could potentially marry off his daughter to someone without her knowledge.

Brides who have been forced into a marriage may file a petition in court to annul the marriage.[37] However it is common to encounter cases where husbands attempt to retaliate against an annulment by threatening to harm the woman, tarnishing her reputation in public, denying her the right to see her children, or even sometimes conspiring with judges to increase any previously agreed amount of *mahr* in an attempt to get her to change her mind.[38]

Kuwaiti Penal Code continues to have provisions, which exonerates abductors and/or rapists if they marry their victims. Article 182 of Kuwait's Penal Code states that if an abductor marries a woman with the permission of her guardian, and the guardian requests that the abductor not be punished, then he is spared any punishment.[39] Also, according to the Equality Now report on rape laws around the world, Article 182 also applies in instances of rape, where if the perpetrator of rape legally marries his victim with the permission of her guardian and the guardian requests that he is not punished, then the perpetrator will not be punished.[40]

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32 Government of Kuwait E-Gateway, Marriage Services, https://www.e.gov.kw/sites/kgoEnglish/Pages/Services/MOJ/RegisterMarriageK.aspx

33 Information obtained from Kuwait advocate, May 2017; Amani Saleh Alessa, "Sex Discrimination within Kuwaiti Family Law, Part 1", (Arab Law Quarterly, 24:2, 2010), p. 127; Sistani's fatwas on marriage: http://www.sistani.org/arabic/book/17/964/; Shia Book on Marriage: http://www.aqaedalshia.com/ahkam/nekah/masael/index.htm#03

34 Article 92 of the Personal Status Act (1984), https://www.e.gov.kw/sites/kgoarabic/Forms/QanoonAlAhwalAlMadaniyah.pdf

35 Website of the Ministry of Justice, https://www.moj.gov.kw

36 Article 182 of the Penal Code (1960), http://gulfmigration.eu/database/legal_module/Kuwait/National%20Legal%20Framework/Rights%20and%20Obligations/2.1%20Penal%20Law_AR.pdf; Information obtained from Kuwaiti advocate, May 2017; Selfscholar, "The Middle East's "Rape Marriage" Laws", *Law, Human Rights and Education in the Middle East*, 18 July 2012, https://selfscholar.wordpress.com/tag/kuwaiti-penal-code/

37 Information obtained from Kuwaiti advocate, May 2017

38 5 Asbaab Yahiq Fiha Lel-Mar'a Khal' Zawjaha, Al-Bawaba, March 12, 2014, https://www.albawaba.com/ar/صحتك%D9%90-وجمالك%D9%90/خلع-الزوجه-زوجها-560525

39 Article 182 of the Penal Code (1960), http://gulfmigration.eu/database/legal_module/Kuwait/National%20Legal%20Framework/Rights%20and%20Obligations/2.1%20Penal%20Law_AR.pdf

40 Equality Now (2017). The World's Shame: '*The Global Rape Epidemic: How Laws around the world are failing women and girls* https://www.equalitynow.org/campaigns/rape-laws-report

The law does not give the woman herself any say in this matter and places the entire decision-making power in the hands of the abductor and the male guardian.

MUSAWAH JUSTIFICATION FOR REFORM

The twin concept of male authority (*qiwamah*) and male guardianship (*wilayah*) over women plays a central role in institutionalizing, justifying, and sustaining a patriarchal model of families in Muslim contexts.

QUR'AN PROMOTES EQUALITY BETWEEN SEXES	Musawah contends that the very notion of male authority and guardianship over women is not in line with Qur'anic principles. The hierarchical understanding of *qiwamah* and *wilayah* are juristic (*fiqh*) constructs shaped by gender ideology of classical Muslim scholars in the context of norms and practices prevalent in their times, where men's superiority and authority over women was the norm.

RECOMMENDATIONS

We recommend the CEDAW committee to urge the State party to:

- **Urgently repeal the Penal Code provisions that allow kidnappers and rapists to marry victims to evade punishment, using precedent set by Lebanon, Morocco and Jordan as examples;**
- **Ensure that Muslim women have equal right to enter into marriages on their own accord without permission of a male guardian or a judge;**
- **Ensure that written consent of all brides is a mandatory requirement in marriage forms to ensure her knowledge and consent of the marriage;**
- **Strictly criminalize forced marriages and enforce punishments on individuals (such as guardians) who plan, conduct and fail to prevent forced marriages.**

CAPACITY TO ENTER MARRIAGE

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY

WOMEN'S EQUAL CAPACITY TO ENTER INTO MARRIAGES	**AFGHANISTAN, BAHRAIN (*Shia*), EGYPT, IRAQ, MOROCCO, TUNISIA, TURKEY:** The consent of a marital guardian (*wali*) is not required for adult brides and grooms. **BANGLADESH, PAKISTAN, SRI LANKA:** The consent of a *wali* is not required for Hanafi women who have reached puberty. **ALGERIA, BAHRAIN, BRUNEI, INDONESIA, IRAQ, JORDAN, LEBANON, MALAYSIA, MOROCCO, OMAN, PAKISTAN, PALESTINE, QATAR, SINGAPORE, TUNISIA, TURKEY, UNITED ARAB EMIRATES:** Regardless of their age, both prospective brides and grooms must consent to the marriage. Consequently, *ijbar* marriages are prohibited.

3. EARLY AND CHILD MARRIAGE

> In its 2016 report to the CEDAW Committee, the Kuwaiti government again confirmed that the legal age for marriage is 15 for girls and 17 for boys under the KPSA as the law forbids notarisation or attestation of the marriage contract in the official register if the spouses are younger than that at the time of notarisation. The Kuwaiti government also stressed that a woman's choice of husband is established in law and a father may not compel his daughter to marry.
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> Kuwait State party report, U.N. Doc. CEDAW/C/KWT/5 (2016), p. 30, http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx

CRITICAL INFORMATION

The KPSA does not explicitly state the minimum age of marriage. Article 24 of the KPSA merely requires that both parties have reached puberty for a marriage to be valid.[41] However, Article 26 stipulates the ages at which a marriage contract can be officially registered/notarized (15 for girls and 17 for boys).[42]

According to the KPSA, in instances where the prospective bride or groom marries below 15 or 17, they still need to register the marriage. An official marriage certificate will however not be issued until they reach 15 or 17 respectively.[43] According to UN World Marriage Data 2015, the average age of first marriage among Kuwait females rose from 25.2 in 1996 to 27.5 in 2005 and among males, from 27.6 to 28.9 during the same period.[44] Given the rising age of marriage, Kuwait is best placed to reform its law to reflect the changing context.

MUSAWAH JUSTIFICATION FOR REFORM

Attempts to set and strictly enforce the minimum age of marriage at 18 for both men and women are often met with resistance from conservative religious authorities, who claim that this is 'un-Islamic.'

NEW HISTORICAL EVIDENCE NOW AVAILABLE	• Commonly, the example of the Prophet Muhammad's marriage to Aishah is used to justify child marriage. The marriage was supposedly consummated when Aishah was nine years old. • However, there are new studies asserting that Aishah was likely to have been 19 at the time of her marriage (*source: http://www.sistersinislam.org.my/news.php?item.997.41*). • The question arises as to why the Prophet's marriage to Aishah is used as a model, while his marriage to Khadijah, a widow 15 years older than him, or his marriage to other widows and divorcees, are ignored as exemplary practices.
QUR'AN STATES CONDITION OF PERSON FIT FOR MARRIAGE	• While the Qur'an does not provide any specification for the age of marriage, Surah an-Nisa' 4:6 requires that orphans should be of sound judgment before they marry. • This indicates that a person must have sufficient judgment and maturity to marry. • Equating the age of majority with the age of puberty and/or rationality (*baligh*), as is traditionally done, forces adulthood on children under 18, even onto those who start menstruating at the age of nine. • The onset of puberty is no indication of sufficient maturity for marriage.

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41 Article 24 of the Personal Status Act (1984), https://www.e.gov.kw/sites/kgoarabic/Forms/QanoonAlAhwalAlMadaniyah.pdf
42 Article 26 of the Personal Status Act (1984), https://www.e.gov.kw/sites/kgoarabic/Forms/QanoonAlAhwalAlMadaniyah.pdf
43 Information obtained from Kuwaiti advocate, May 2017; Amani Saleh Alessa, "Sex Discrimination within Kuwaiti Family Law, Part 1", (Arab Law Quarterly, 24:2, 2010), pp. 121-122
44 United Nations Population Division, "World Marriage Data 2015", https://esa.un.org/ffps/Index.html#/maritalStatusData

RECOMMENDATIONS

We recommend the CEDAW committee to urge the State party to:

- **Enforce 18 years as the absolute minimum age of marriage for girls and remove all legal loopholes that allow for exceptions;**
- **Mandate marriage registrars to report cases of early marriage to authorities.**

MINIMUM AND EQUAL AGE OF MARRIAGE	POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY
18 YEARS WITH NO EXCEPTIONS	**EGYPT UAE, MALDIVES, INDIA, PHILIPPINES, JORDAN, TUNISIA** The minimum age for marriage is 18 for both females and males. **PAKISTAN (SINDH PROVINCE)** The minimum age for marriage is 18 for both females and males. The law criminalizes and penalizes the following: (i) males over 18 who contract a child marriage; (ii) whoever performs, conducts or directs a child marriage; and (iii) parents or guardians who promote a child marriage, permit it to be solemnized or negligently fail to prevent it from being solemnized.

4. POLYGAMY

CRITICAL INFORAMATION

According to the KPSA, a Muslim man may marry up to four wives at one time without any legal conditions.[45] Article 21 of the KPSA provides that a man may not marry a fifth woman before his marriage to one of the other four wives is dissolved and her waiting period after the divorce (*iddah*) is over.[46] Article 85 of the KPSA provides that a husband may not house more than one wife in one home without their consent.[47]

A woman cannot prohibit her husband from taking on another wife but may stipulate in the marriage contract that if her husband enters into a polygamous marriage, she has a right to a divorce. Therefore, there is no provision in the marriage contract to restrict the marriage to a monogamous one.[48] Available data suggest a wide range of estimates for polygamous marriages, placing it at 2% to 13% of marriages.[49]

45 Badria Al Awadi, Sheikh Hameed Al Mubarak, Ahmed Al Attawi, "Women's Rights in the Kuwait Personal Status Act and Bahraini Shari'a Judicial Rulings (Theory Part), (Bahrain: Freedom House, 2009), p. 36.
46 Article 21 of the Personal Status Act (1984), https://www.e.gov.kw/sites/kgoarabic/Forms/QanoonAlAhwalAlMadaniyah.pdf
47 Article 85 of Personal Status Act (1984), https://www.e.gov.kw/sites/kgoarabic/Forms/QanoonAlAhwalAlMadaniyah.pdf
48 Articles 40-41 of the Personal Status Act (1984), https://www.e.gov.kw/sites/kgoarabic/Forms/QanoonAlAhwalAlMadaniyah.pdf
49 Chelby K, Women of Polygamous Marriages in an Inpatient Psychiatric Service in Kuwait (Journal of J Nervous and Mental Disease, 173:1, 1985), https://www.ncbi.nlm.nih.gov/pubmed/3965613; Kuwait Culture, "Between Two Wives", *Culture*, 16 December 2016, http://www.kuwaitculture.org/two-wives-experiences-polygamy/; Sylvia Westall, "Marriage loses its sparkle", *Reuters*, 10 October 2012, http://www.reuters.com/article/us-kuwait-marriage-idUSBRE8990XP20121010

According to information by civil society, there is an urgent need to reform the law to make it a legal requirement for existing wives to be informed and to consent to their husbands' polygamous marriages.[50]

MUSAWAH JUSTIFICATION FOR REFORM

Musawah believes Islam promotes monogamy and only permits polygamy as an alternative in exceptional circumstances. *Surah an-Nisa'* 4:3 in the Qur'an states: *'If you fear that you shall not be able to deal justly with the orphans, marry women of your choice, two, or three, or four; but if you fear that you shall not be able to deal justly [with your wives] then marry only one.... That will be more suitable, to prevent you from doing injustice'.*

QUR'AN PROMOTES MONOGAMY	• When the Qur'an was revealed, it imposed limitations upon the pre-Islamic practice of polygamy. • The verse in Surah an-Nisa' that allows polygamy if a man can treat all his wives justly was revealed after a battle which had resulted in many men being killed, leaving behind war widows and orphans. • As men were breadwinners in that society, the widows found it difficult to provide for their children. It was in this context that polygamy was tolerated in Islam: to provide for the welfare of widows and the orphaned children.
CHALLENGING POLYGAMY	• Polygamy is not an intrinsically 'Islamic' practice, as some Muslims believe. • Polygamy was a practice that existed in various civilizations, religions, and cultures in many parts of the world until it was abolished by law as governments acknowledged the injustices it inflicted on women and children. • Tunisia has forbidden polygamy on the ground that it is impossible for a man to deal justly with more than one wife. Thus, the continuum of reform suggests that polygamy should be even more restricted than it was in the situation discussed in the Qur'an.

RECOMMENDATIONS

We recommend the CEDAW committee to urge the State party to amend the KPSA to:

- **Amend KPSA to prohibit polygamy by Omani men, following examples of other Muslim countries which have abolished the practice in the best interest of family well-being;**
- **Alternatively, introduce conditions in the law to restrict the practice of polygamy to minimize harm and injustice done to the wives and children, especially:**
  - **The existing wife/wives have to consent to her husband marrying a another wife;**
  - **Husband has to provide justification for entering into multiple marriages and show evidence of financial capacity to support more than one wife;**
  - **The husband signs a contract promising to deal with all wives fairly and equally in terms of financial support, time spent and turn-taking and other marital obligations;**
  - **Provide a model, standard marriage contract with options for the couple to prohibit polygamy within the marriage and for a wife to explicitly enunciate a monogamous marriage;**
  - **Enable polygamy as grounds for divorce.**

50 Information obtained from Kuwait advocate, May 2017

POLYGAMY

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY

POLYGAMY PROHIBITED: KYRGYZSTAN, TAJIKISTAN, TUNISIA, TURKEY, UZBEKISTAN

COURT AUTHORIZATION AND CONSENT OF EXISTING WIVES NEEDED:

ALGERIA

Polygamous marriages must be authorized by the court and may only be concluded with the agreement of existing wives.

Court permission is only granted if the husband is able to provide justification for entering into multiple marriages as well as proof of his ability to be fair to all wives and meet the necessary conditions of married life with regard to all his marriages.

INDONESIA

Polygamous marriages must be authorized by the court and may only be concluded with the agreement of existing wives.

Court permission is only be granted if the husband's existing wife:
(i) is unable to perform her conjugal duties;
(ii) suffers from a physical infirmity or an incurable disease; or
(iii) cannot bear children.

IRAQ (KURDISTAN REGION):

Polygamous marriages must be authorized by the court and may only be concluded with the agreement of the existing wives. Court permission is only granted if certain conditions are met:

(i) the first wife has to agree before the court to her husband marrying a second wife;
(ii) if the wife is diagnosed with an incurable disease that prevents sexual intercourse or if the wife is infertile;
(iii) the man has the financial capacity to support more than one wife;
(iv) the husband signs a contract promising to deal with both wives fairly and equally in terms of sexual intercourse and other marriage relations;
(v) the first wife does not have a condition in the marriage contract that the husband will not take a second wife.

A man who concludes a polygamous marriage without the authorization of a judge will be subject to a penalty of imprisonment and fine and judges are prohibited from suspending the penalties.

POLYGAMY AS GROUNDS FOR DIVORCE

ALGERIA, BAHRAIN, EGYPT, JORDAN, LEBANON, MAURITANIA, MOROCCO, PALESTINE:

A woman can stipulate in the marriage contract that her husband cannot take another wife. If her husband breaches this term of the marriage contract, the woman has the right to divorce.

AFGHANISTAN (SUNNI), EGYPT:

A woman may petition the court for a divorce if she is able to show that her husband's polygamous marriage is causing her harm.

BANGLADESH, PAKISTAN:

A wife may seek a divorce if her husband has taken an additional wife in contravention with the requirements of the law.

5. DIVORCE RIGHTS

With regard to divorce, the State party in its 2016 report to the CEDAW Committee, stipulates that a wife has rights to divorce her husband and may resort to the courts to seek a divorce from her husband under certain circumstances. Furthermore, the report mentions grounds under which she may seek a divorce, which includes "if her husband fails to provide for her…".

Kuwait State party report, U.N. Doc. CEDAW/C/KWT/5 (2016), p. 30,
http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx

CRITICAL INFORMATION

The KPSA provides for three different mechanisms for divorce:

(i)*Talaq* - Unilateral repudiation: A husband may unilaterally repudiate a marriage without much restrictions or conditions.[51] There is a divergence between the Sunnis and Shias. While there is no requirement of witnesses with regard to the exercise of a Sunni husband's right to divorce, a Shia husband requires two witnesses.[52]

According to academic research[53] and information on the ground, in practice, it is not uncommon for men:

- To divorce their wives without informing them. A wife would only discover that she is divorced when the court officer delivers the official divorce papers to her;
- To file a case called *ta'a* whereby the husband claims that the wife is 'disobedient (*nushuz*)'. If a *ta'a* ruling is granted then the wife is expected to return to the home. If she doesn't, she occupies a position as neither married nor divorced (*nazhiz*). Once a woman is designated as *nushuz*, she has no right to financial maintenance. Nonetheless, the law does not permit that a *ta'a* ruling is effected by force.[54]

(ii) *Fasakh* - Judicial divorce: Valid grounds for seeking judicial divorce by a wife include a husband's: failure to provide financial maintenance; prolonged absence or imprisonment; serious chronic illness; apostasy. In addition, a wife may seek divorce on the basis of damage inflicted verbally or physically by the husband in such a way that marital life cannot continue between them.[55]

In divorce cases based on harm, a wife's testimony is not sufficient to prove harm; she must bring two male witnesses or a male and two female witnesses to court.[56] This is highly problematic as in instances of verbal abuse or physical violence that occurs in the

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51 Articles 102-110 Personal Status Act (1984), https://www.e.gov.kw/sites/kgoarabic/Forms/QanoonAlAhwalAlMadaniyah.pdf
52 Information obtained from Kuwait advocate, May 2017; Amani Saleh Alessa, "Sex Discrimination within Kuwaiti Family Law, Part 1", (Arab Law Quarterly, 24:2, 2010), p. 162
53 Articles 87-88 of the Personal Status Act (1984), https://www.e.gov.kw/sites/kgoarabic/Forms/QanoonAlAhwalAlMadaniyah.pdf; Information obtained from Kuwait advocate, May 2017; Amani Saleh Alessa, "Sex Discrimination within Kuwaiti Family Law, Part 1", (Arab Law Quarterly, 24:2, 2010), Footnote 98, pp. 161-164
54 Articles 87-88 of the Personal Status Act (1984), https://www.e.gov.kw/sites/kgoarabic/Forms/QanoonAlAhwalAlMadaniyah.pdf
55 Articles 120-148 of the Personal Status Act (1984), https://www.e.gov.kw/sites/kgoarabic/Forms/QanoonAlAhwalAlMadaniyah.pdf
56 Article 133 of the Personal Status Act (1984), https://www.e.gov.kw/sites/kgoarabic/Forms/QanoonAlAhwalAlMadaniyah.pdf

confines of the home, there may not be witnesses or other family members who are aware that domestic violence is taking place.

(iii) *Khul'* - Redemptive divorce: A wife may seek a *khul'* divorce, whereby she is granted a divorce in exchange for a mutually agreed compensation to be paid to the husband. *Khul'* divorce however requires the consent of the husband.[57] **Therefore even if the wife is willing to leave the marriage by providing compensation, she requires 'permission' of her husband to do so**.

It is not mandatory to register a divorce under the KPSA.[58] This adversely impacts women and children emotionally, financially and socially as husbands can divorce their wives at will, without the knowledge of the family. There are reported incidents where husbands divorce their wives without informing them to avoid financial obligations following a divorce.[59]

MUSAWAH JUSTIFICATION FOR REFORM	
It is cruel and unjust to continue to allow men the right to divorce their wives at will. Given today's realities and contemporary conceptions of justice, the urgent necessity to provide equal and just grounds for divorce to both men and women must be undertaken.	
QU'RAN PROMOTES JUST & FAIR DIVORCE	• **The man's unilateral right to divorce his wife at will contradicts Qur'anic teachings, and specifically the message of kindness, justice, fairness and to do what is right and good.** • **The Qur'an calls on parties to the marriage to 'either hold together on equitable terms (*ma'ruf*), or separate with kindness (*ihsan*)' (*Surah al-Baqarah* 2:229).** • **The proceedings for arbitration and mediation in Surah an-Nisa' 4:35 place both spouses on an equal footing: *'If you fear a breach between a married couple appoint (two) arbiters, one from among his people, and the other from among her people.'***

RECOMMENDATIONS

We recommend the CEDAW committee to urge the State party:

- **Amend the KPSA to abolish the husband's right to unilateral divorce (*talaq*);**
- **Ensure that husbands and wives have the equal right to divorce, including the grounds for divorce and standards of proof;**
- **Ensure that all divorces can only take place in the court, with both parties present and all claims and reliefs are dealt with. All divorces must be registered;**
- **Ensure that a wife's testimony of harm is enough to prove grounds for divorce and witnesses are not required;**
- **Ensure that compensation by husband is compulsory in event of harm caused to wife in the course of the marriage;**
- **Ensure that *khul'* divorce by wife does not require the consent of the husband.**

57 Articles 111-119 of the Personal Status Act (1984), https://www.e.gov.kw/sites/kgoarabic/Forms/QanoonAlAhwalAlMadaniyah.pdf
58 Information obtained from Kuwait advocate, May 2017
59 Yacoub Al-Sane', Ithbat al-Talaq: Qanun Mahkamat al-Usra, *Al-Qabas*, 27 March 2016, http://alqabas.com/8173/

DIVORCE	POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY
EQUAL RIGHT TO DIVORCE	**TUNISIA, TURKEY:** All divorces must go through the court. The grounds for divorce are equally available to both spouses. Divorce through unilateral repudiation *(talaq)* by husband is not recognized.
TALAQ DIVORCE	**ALGERIA, MAURITANIA:** A divorce by way of repudiation by the husband can only be effectuated through the court. **BANGLADESH, PAKISTAN** The standard marriage form includes a provision on the curtailment of a husband's right to divorce. **MOROCCO:** Divorce by talaq can only be effectuated under judicial supervision. The wife and children must have received all vested rights before it is authorized.
KHUL' DIVORCE	**ALGERIA** A wife can obtain a khul' divorce in court without the consent of the husband upon payment of compensation.

6. VIOLENCE AGAINST WOMEN

CRITICAL INFORMATION

According to Kuwait women's rights groups, repercussions of 'disobedience' of women vary as widely as the spectrum for behavior that is punished: disrespecting male kin or elder females, smoking cigarettes, communicating with members of the opposite sex outside of morally sanctioned relationships; the list can be as endless as the disciplinarian's imagination. In legal terms, many disciplinary tools have a direct impact on individual freedom, for example: families can report "wayward" youngsters to the authorities so that difficult cases are locked up in governmental social care homes until a guardian consents to releasing them.

Girls who leave their homes without permission can be reported for "absconding" at local police stations, forcing them into a life in the dark margins of society where they cannot work, marry or move on without a guardian's consent to drop the charge of absconding, regardless of their age.

Honor-based violence:

At the more extreme end of the spectrum is the ultimate disciplinary act: the threat of death that is meted out only on women, as the right of a male kin enraged by an adulterous or sexual transgression, which is sanctioned by law.

Article 153 of Kuwait's Penal Code is an "honor" killing law that treats these murders as a misdemeanor and punishes male perpetrators with a maximum of a 3-year prison sentence a fine equivalent to 15 Kuwaiti Dinars. This article exemplifies gender-based tyranny, and as a law, clearly violates at least three articles of Kuwait's Constitution.

Article 153[60] states that "*Anyone who surprises his wife in a state of adultery, or surprises his daughter or mother or his sister in the presence of a man and kills her immediately or kills him or kills them together is punishable by imprisonment for a period not exceeding three years and a fine of not more than 3000 rupees or one of these two punishments*."

This violates Articles 9, 29, and 34 of the Kuwaiti Constitution which call for protecting the family as the basis of society and promoting the values of equality between men and women in law and in public duties, in addition to ensuring a fair trial where the accused is innocent until proven guilty in a legal trial in which the country provides the necessary guarantees to exercise the right of defense.

Besides being in direct opposition to many international and regional human rights agreements that Kuwait has ratified, this article is also in flagrant disregard of the *Shari'ah* governance of accusations of adultery (*zina*), which requires four male witnesses to plainly see the act of sexual consummation, as well as a confession from the adulterer.

Even the punishment for "*zina*" in Kuwait's Penal Code require witnesses and a confession, and provide for a higher maximum sentence of five years imprisonment or fine equivalent to 24 Kuwaiti Dinars. The ultimate act of discipline by death is therefore not related to the adulterous act itself but to who is committing it, and the right of men to control the actions of female relatives and react with impunity and little fear of consequence.

Domestic violence:

Kuwait has no specific legislation criminalizing domestic violence. Alongside the persistence of male guardianship over basic rights like marriage Kuwaiti Penal Code also contains problematic provisions, which disempowers Kuwaiti women on a daily basis,

Article 29 of the Kuwaiti Penal Code states that "No (criminal) offence is committed if the person exercising the right to discipline the other is entitled to do so by law, provided that the act has its limits and that its intentions are disciplinary."[61]

According to women's rights and child rights groups, emboldened by the maintenance-obedience and male guardianship framework, Article 29 gives a husband the right to 'discipline' his wife and parents the right to 'discipline' their children[62].

Based on a contested translation of the Qur'anic verse 4:34, it is commonly misunderstood that Islam allows husbands to beat their wives for "disciplinary reasons" as long as they do not cause grievous bodily harm. This has widely informed social and legal practices because it remains unchallenged by mainstream scholars and traditionalists. Research has shown that the conception of wife beating as "disciplinary" has been rationalized in Kuwaiti public discourse as different from domestic violence, which is punishable by Articles 160 and 162 of

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60 Article 153 of the Penal Code (1960), http://gulfmigration.eu/database/legal_module/Kuwait/National%20Legal%20Framework/Rights%20and%20Obligations/2.1%20Penal%20Law_AR.pdf

61 Article 29 of the Penal Code (1960), http://gulfmigration.eu/database/legal_module/Kuwait/National%20Legal%20Framework/Rights%20and%20Obligations/2.1%20Penal%20Law_AR.pdf

62 Corporal Punishment of Children in Kuwait UPR report 2015 https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0ahUKEwiusqWT-ezWAhUBebwKHe1dBQkQFgg2MAI&url=https%3A%2F%2Fuprdoc.ohchr.org%2Fuprweb%2Fdownloadfile.aspx%3Ffilename%3D1382%26file%3DEnglishTranslation&usg=AOvVaw2-hba4KW3FTHVoH8moz5Rx

the Kuwaiti Penal Code, should the act lead to bodily harm and injury or permanent disability respectively.[63]

In 2016, Abolish 153 carried out the first academic survey on all forms of domestic violence and the removal of legislative and social obstacles to women's right to protection in the Arabian Gulf.[64] It found that the vast majority do not know that there is a law permitting honor crimes in the State of Kuwait and that 63% of the people reject the existence of this shameful and arbitrary law.

According to civil society and media reports, there are no solid statistics on violence against women in Kuwait because women are reluctant to file complaints and when complaints are filed, perpetrators are rarely arrested and evidence is often ignored.[65] Nevertheless, available data suggest that there is a relatively high prevalence of domestic violence in Kuwait (bearing in mind these statistics represent under-reported figures on the actual prevalence of domestic violence in Kuwait):

- As per statistics issued by the Ministry of Justice in 2010, between 2000 and 2010, there was an average of 368 reported cases per year;[66]
- According to statistics issued by the Ministry of Justice in 2011, 35% of women in Kuwait reported being subjected to spousal abuse;[67]
- According to a survey of 1,071 women conducted by an academic from Kuwait University, 40% of women reported having experienced physical violence by their spouses at least once;[68]
- According to statistics released by the Ministry of Justice's Statistics and Research Department,[69] there were 447 registered cases of violence against women between 1 January 2016 and 31 December 2016, in which only 76 offenders were found guilty.[70]

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63 Articles 162 and 162 of the Penal Code, http://gulfmigration.eu/database/legal_module/Kuwait/National%20Legal%20Framework/Rights%20and%20Obligations/2.1%20Penal%20Law_AR.pdf

64 Survey conducted by Dr. Justin Gengler of the SESRI Institute at the University of Qatar, regarding the findings from the national survey measuring public opion on violence against women in Kuwait.

65 Kuwait Society for Human Rights, "A Report on women's Rights in Kuwait", *Submission to the CEDAW Committee for the 68th Session*, 2017, p. 6, http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/KWT/INT_CEDAW_NGO_KWT_21620_E.pdf; Human Rights Watch, "Kuwait", *Events of 2009*, https://www.hrw.org/world-report/2010/country-chapters/kuwait; Kuna, "Hidden Pain: Physical abuse against women rising in Kuwait", *Kuwait Times*, 31 January 2017, http://news.kuwaittimes.net/nearly-one-domestic-violence-case-reported-kuwait-every-day/; Nawara Fattahova, "Nearly one domestic violence case reported in Kuwait everyday", *Kuwait Times*, 17 December 2014, http://news.kuwaittimes.net/nearly-one-domestic-violence-case-reported-kuwait-every-day/

66 Nawara Fattahova, "Nearly one domestic violence case reported in Kuwait everyday", *Kuwait Times*, 17 December 2014, http://news.kuwaittimes.net/nearly-one-domestic-violence-case-reported-kuwait-every-day/

67 Nawara Fattahova, "Spousal Abuse … Kuwait's Secret Shame", *Kuwait Times*, 30 October 2014, http://news.kuwaittimes.net/spousal-abuse-kuwaits-secret-shame/

68 Kuna, "Hidden Pain: Physical abuse against women rising in Kuwait", *Kuwait Times*, 31 January 2017, http://news.kuwaittimes.net/nearly-one-domestic-violence-case-reported-kuwait-every-day/

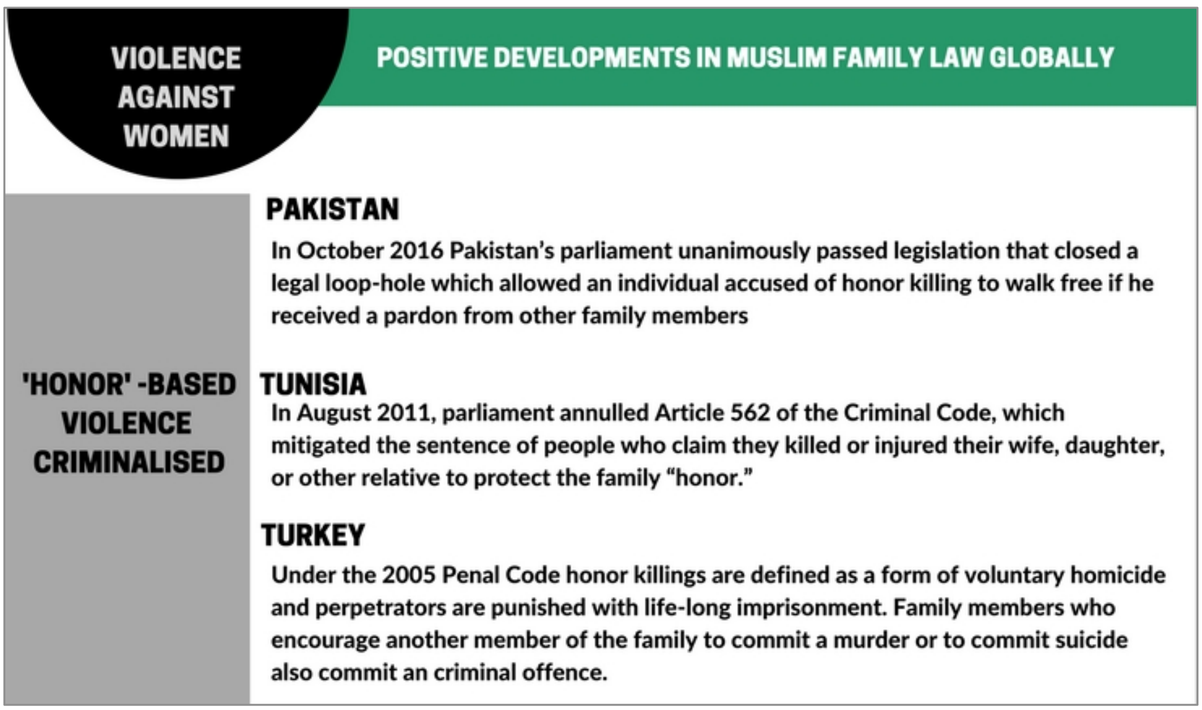
69 Kuwait Ministry of Justice Statistics and Research Department Study on Violence and Assaults Against Women from 2000-2009, https://www.moj.gov.kw/sites/ar/StatisticalReports/Documents/women-abReport.pdf

70 Kuwait's State party Report to CEDAW (2016), http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fKWT%2f5&Lang=en

RECOMMENDATIONS

We recommend the CEDAW committee to urge the State party to:

- **Urgently repeal Articles 153 of Penal Code;**
- **Urgently introduce legislation that explicitly criminalizes domestic and honor-based violence and provide protection to women;**
- **Work closely with women's rights groups to set up support services such as shelters for women and girls in vulnerable and/or abusive situations and provide them with legal, counseling and psycho-social support;**
- **Strengthen police services and training to effectively and sensitively respond to violence against women and girls;**
- **Ensure the introduction of punitive measures against those who would harm women, and to implement plans to remedy gender inequality in Kuwait.**



VIOLENCE AGAINST WOMEN

POSITIVE DEVELOPMENTS IN MUSLIM FAMILY LAW GLOBALLY

LEGISLATION AGAINST DOMESTIC VIOLENCE

IRAQ KURDISTAN REGION,

In addition to criminalizing physical, psychological and sexual violence within the family, The Act of Combatting Domestic Violence in the Kurdistan region (Act No 9 of 2011), also recognized forced marriage, child marriage, female genital mutilation, forced divorce, verbal abuse, forced prostitution and abortion (among other violations) as constituting as domestic violence. Furthermore the Act formed a competent court to specialize in domestic violence cases.

ALGERIA

Penal Code was amended in 2016 making assault against a spouse or ex-spouse punishable by up to 20 years in prison, depending on the victim's injuries, and by a life sentence if the attack results in death.

INDONESIA

In 2004, Indonesia enacted a law against domestic violence, including physical, psychological and sexual violence, as well as economic abandonment. The law intended to provide protection to spouses, children and relatives, as well as domestic workers or other persons working or living within the domestic environment. It also granted stiff fines and long jail terms to perpetrators.

MALAYSIA

The first country among the Organisation of Islamic Conference (OIC) countries and the first in the South-East Asian region to pass a specific law on domestic abuse and the. The Domestic Violence Act (DVA) of 1994 recognised all forms of domestic violence as seizable offences or crimes for which the perpetrator can be arrested without a warrant.

MARRY-YOUR-RAPIST LAWS ABOLISHED

TUNISIA

In July 2017, government adopted a Law on Eliminating Violence Against Women, which introduced new criminal provisions and increased penalties for various forms of violence when committed within the family. The law calls for establishing family violence units within Tunisia's Internal Security Forces to oversee domestic violence complaints. The law also repealed Article 227 of its Criminal Code which exempted a rapist from all investigations or legal consequences if he married his victim.

JORDAN

In August 2017, Article 308 in the Jordan Penal Code was abolished by the Parliament in a "historic vote". The article allowed for an aggressor of sexual assault to avoid persecution and punishment if he married the victim.

LEBANON

In August 2017, Article 522 of the Lebanon Penal Code, which allowed a rapist to escape punishment for his crime so long as he marries the victim, was repealed

EGYPT

In 1999, Article 291 of the Egypt Penal Code was repealed by a presidential decree. The original article was a colonial era legislation which allowed any individual who committed sexual assault to avoid penalty if he entered into marriage with the female victim.

ANNEXE 1:

MUSAWAH VISION FOR THE FAMILY

Musawah asserts that in the twenty-first century, there cannot be justice without equality. Many provisions in Muslim family laws, as defined by classical jurists and as reproduced in modern legal codes, are neither tenable in contemporary circumstances nor defensible on Islamic grounds. Not only do these family laws fail to fulfill the *Shari'ah* requirements of justice, but they are being used to deny women rights and dignified choices in life. These elements lie at the root of marital disharmony and the breakdown of the family.

Musawah believes that Qur'anic principles and the richness of the Islamic juristic tradition enable us to formulate Muslim family laws today that are egalitarian and reflect the needs of contemporary societies. Islamic teachings and universal human rights standards, including the CEDAW Convention, are fully compatible and are dynamic and constantly evolving, based on changing times and circumstances. Inspired by the Qur'anic vision of justice and gender relations, Musawah contends that gender equality and non-discrimination can only be achieved with laws that transform power relations in the family and in society in the direction of just outcomes.

It is our hope that the CEDAW Committee will encourage Governments everywhere, and particularly those purporting to speak for and in the name of Islam and Muslim communities, to:

- Recognize the diversity of opinions, laws and practices in the Muslim world and the growing scholarship in Islam that recognizes equality and justice and the possibility and necessity for reform of Muslim family laws today.
- Promote human rights standards as intrinsic to the teachings of Islam, national guarantees of equality and non-discrimination, and the lived realities of men and women today.
- Encourage open and inclusive public debate regarding diversity of opinion and interpretations in Muslim laws and principles relating to family laws and practices.

